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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/779,975

02/17/2004

James Alphonse Burkart

9093

7590  
JAMES A. BURKART JR.  
2054 Chadds Ford Dr.  
Reston, VA 20191

09/19/2007

EXAMINER

LAUX, JESSICA L

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

09/19/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/779,975

Applicant(s)

BURKART, JAMES ALPHONSE

Examiner

Jessica Laux

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election, with traverse, of species I; species XII; species XXII; XXXII in the reply filed on 6/29/2007 is acknowledged. However, because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, but rather merely presented a collection of facts that do not amount a persuasive argument as to why the inventions are not distinct, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Objections***

Claim 17 objected to because of the following informalities: there is lack of antecedent basis for the limitation "said upstanding-face" of the high and low ledgers. Appropriate correction is required.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

Art Unit: 3635

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-16 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 6279271.

Although the conflicting claims are not identical, they are not patentably distinct from each other because while the '271 patent does not expressly claim a 5/4 board that is a common and well known/used board in the deck building art and therefore would have been an obvious design choice to one of ordinary skill in the art to use considering it is readily available.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 17-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Mickelsen (4860502).**

Regarding claim 17: Mickelsen discloses a grid apparatus for supporting panels, the apparatus comprising:

a low-ledger, with an upper-face and an adjacent vertical-face (22),

Art Unit: 3635

a high-ledger, with an upper-face and an adjacent vertical-face (24),

a plurality of sloping-members (26), each sloping-member with an upper-face, a low-end, a high- end, and with one or more projection-depressions (46; Col. 2, lines 36-37) of said upper-face such as one or more partially driven nails, or such as one or more drilled holes,

one or more cross-members (40,56,42), each cross-member comprising a middle-portion (56) and two end- portions (40,42), each end-portion with an upper-face, the middle-portion with an upper-face, said upper-face of the middle-portion and said upper-faces of the end-portions substantially co- planar (figure 4), said low-ledger and said high-ledger oriented such that said upstanding-face of said high- ledger substantially faces said upstanding-face of said low-ledger, said sloping-members disposed transverse to said low-ledger, and each substantially extending from said vertical-face of said low-ledger to said vertical-face of said high-ledger, said low-end of each sloping-member resting upon said upper-face of said low-ledger, said high-end of each sloping-member resting upon said upper-face of said high-ledger,

wherein said sloping-members are positioned at generally uniform intervals along the ledgers, said cross-members generally parallel with said low-ledger, said middle-portions substantially extending from one sloping member to the next, said end-portions of said cross-members disposed over said upper-faces of said sloping-members, each end-portion proximate one or more said projection-depressions of said sloping-member, wherein said cross-members interface with said projection-depression of said sloping-members, wherein said end-portions of said cross-members are held by said interface

Art Unit: 3635

with said sloping members, wherein a grid support structure is formed, whereby grid members can be snapped, slid, or set into position, unsnapped, slid, or lifted out of position without requiring tools for fastening or unfastening, whereby the grid can be installed, adjusted, and uninstalled from below itself, whereby the ease of installation and removal is facilitated, and whereby, access to the area above the grid for maintenance and other reasons is greatly facilitated, wherein the upper-faces of the cross-members are substantially co-planar to thereby provide a support surface for panels (figures 1-4).

Regarding claim 18: Mickelsen discloses a grid support structure comprising:

a first-side supporting means (22);

a second-side supporting means (24);

a plurality of rafter-members (26), each rafter-member with an upper-face, a first-end, a second-end, and with one or more projection-depressions (46; Col. 2, lines 36-37) of said upper-face, each rafter-member substantially extending from said first-side support means to said second-side support means, wherein a number of said rafter-members are positioned at substantially uniform intervals from each other;

one or more cross-members (40,42,56), each cross-member comprising a middle-portion (56) and two end-portions (40,42), each end-portion with an upper-face, the middle-portion with an upper-face, said cross-members positioned transverse to said rafter-members, said middle-portions of said cross-members substantially extending from one rafter-member to the next, said end-portions of said cross-members

Art Unit: 3635

disposed over said upper-faces of said rafter-members, each end- portion proximate one or more said projection-depressions of said rafter-member,

wherein said cross-members interface with said projection-depression of said rafter-members, said end-portions of said cross-members are held by said interface with said members, whereby cross-members can be snapped, slid, or set into position, unsnapped, slid, or lifted out of position, whereby cross-members can be installed, adjusted, and uninstalled from below, whereby the ease of installation and removal of cross-members is facilitated, and whereby, access to the area above the grid for maintenance and other reasons is greatly facilitated.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 6:30am to 2:30pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



/JEANETTE CHAPMAN/  
PRIMARY EXAMINER  
ART UNIT 3635

JL  
9/11/2007